



NewsLine

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Mission Statement

The Mission of the Tennessee Auctioneers Commission is to protect the public and licensees by monitoring the auctioneer profession through licensure and regulation

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COMMISSION REPORT

The Auctioneer Commission calendar is set for 2015 with our first board meeting scheduled for Monday, January 5, 2015 at 9:00 a.m. in Conference Room 1-B of the Davy Crockett Building in Nashville. Meeting dates and times are subject to change so be sure to check prior to attending the meeting.

One of the best ways to stay informed about meeting changes and commission news is through the **Notify App**. Notify is a free registration-based application that allows licensees and the general public to receive email and or text notifications on issues which may impact your license such as rule, policy and fee changes. You will also receive a notification when the newsletters are available with a link to the electronic NewsLine. You can also receive notification from other regulatory boards. Registration is easy and convenient. Visit the commission website at tn.gov/regboards/auction or tn.gov/notify-app/sign_up.html to register for electronic notifications.

In October, the commission held a rulemaking hearing and heard comments from licensees and others regarding the proposed rule changes and proposed new rules. As a result of the comments received, the commission voted to make some changes to the proposed rules. As these rule changes go into effect, licensees will be notified of the changes and their effective date. Again, registration in the Notify will ensure you are informed about the changes affecting your licenses. The commission would like to thank all those who attended and participated in the rulemaking hearing.

DISCIPLINARY ACTION REPORT

September 2014

Respondent: Auction Advisors, New York, NY
Violation: Unlicensed Activity
Penalty: \$ 2000.00

October 2014

Respondent: Grand Estates Auction Company, Charlotte, NC
Violation: Unlicensed Activity
Penalty: \$ 500.00

*"The Tennessee Department of Commerce and Insurance is committed to principals of equal opportunity, equal access, and affirmative action."
Contact the EEO Coordinator or ADA Coordinator at 615-741-2177(TDD).*

Selling Firearms & Ammunition

Under the Gun Control Act of 1968, as amended, any person engaging in the business of importing, manufacturing or dealing in firearms is required to have a Federal Firearms License (FFL).

The term “engaged in the business” as applied to a dealer, which includes an auctioneer, means a person who devotes time, attention and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms. A person can be “engaged in the business” without taking possession of the firearms that are sold. However, the term does not include a person who makes occasional sales, exchanges or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of their personal collection of firearms.

Accordingly, whether an auctioneer is a person who should be FFL-licensed depends upon whether they are engaged in selling firearms as a business. To address this issue, we will examine two types of auctions generally conducted by most auctioneers: estate auctions and consignment auctions.

In the case of estate auctions, the auctioneer acts as an agent of the executor in finding buyers for the estate’s firearms. The firearms are possessed by the executor of the estate, and the sales of firearms are made by the estate. In these cases, the auctioneer does not meet the definition of “engaged in the business” as a firearms dealer and would not need an FFL. An auctioneer engaged in estate auctions, whether [FFL] licensed or not, may perform this function and the firearms would not have to be returned to the licensed premises prior to their delivery.

In the case of consignment auctions, the auctioneer often takes possession of the firearms in advance of the auction. The firearms belong to persons who have entered into a consignment agreement with the auctioneer, giving the auctioneer authority to sell the firearms. The auctioneer has possession and control of the firearms. Under these circumstances, the auctioneer would generally need an FFL license. Licensed auctioneers in consignment auctions generally must engage in the firearms business from their licensed premises. However, firearms may be displayed at an auction site away from the auctioneer’s licensed premises and sales of the firearms can be agreed upon at that location, but delivery may be made to purchaser only after the firearms have been returned to the auctioneer’s licensed premises. The simultaneous sale and delivery of the auctioned firearms away from the licensed premises would be a violation of the law (i.e. engaging in business at an unlicensed location). [ATF Ruling 96-2]

Under federal law, the estate, and the auctioneer acting as its agent, must not knowingly sell or otherwise dispose of firearms or ammunition to a person who:

- 1) is under indictment for, or has been convicted in any court, of a crime punishable by imprisonment for a term exceeding one year;
- 2) is a fugitive from justice;
- 3) is an unlawful user of or addicted to any controlled substance;
- 4) has been adjudicated as a mental defective or has been committed to a mental institution;
- 5) is an alien illegally or unlawfully in the United States or an alien admitted to the United States under a non-immigrant visa;
- 6) has been discharged from the Armed Forces under dishonorable conditions;
- 7) was a citizen of the United States and has renounced his or her citizenship;
- 8) is subject to a court order that restrains the person from harassing, stalking or threatening an intimate partner or child of such intimate partner.
- 9) has been convicted of a misdemeanor crime of domestic violence; and
- 10) the buyer must reside in the same state as the estate, or a federal firearms licensee must act as an intermediary for the firearms to be transferred.

As stated earlier, FFL-licensed auctioneers generally must engage in the firearms business from their licensed premises. However, auctioneers may conduct an auction at a location other than their licensed premises by displaying firearms at the auction site, agreeing to the terms of the sale of the firearms, then returning the firearms to the licensed premises for delivery to the purchaser. As a licensee, the auctioneer making these sales would be required to keep all of the records specified under the GCA. For example, if the sale is to a non-licensee, the auctioneer would be required to complete an ATF Form 4473 and conduct a background check prior to transferring the firearm. [18 U.S.C. 922(a)(3) and (5), 922(d), 922(g) and (n), 27 CFR 478.29, 478.30, and 478.32, ATF Ruling 96-2]

Ammunition is defined as “ammunition or cartridge cases, primers, bullets or propellant power designed for use in any firearm other than an antique firearm. The term shall not include (a) any shotgun shot or pellet not designed for use as a single, complete projectile load for one shotgun hull or casing, nor (b) any unloaded, non-metallic shotgun hull or casing not having a primer.” [27 CFR 478.11]

This article originally appeared in the June 2010 issue of Auctioneer, the official publication of the National Auctioneers Association. Excerpts with editing have been reprinted in the NewsLine with the permission of the National Auctioneers Association 2011.

Happy New Year & Best Wishes for a Prosperous Year in 2015

2015 IRS Mileage Rates

The IRS has released the 2015 mileage reimbursement rates which go into effect January 1, 2015. The new standard rates for the use of a car, van, pickup or panel truck are:

- ◇ **57.5** cents/mile for business use (up from 56 cents in 2014)
- ◇ **23** cents/mile for moving or medical purposes
- ◇ **14** cents/mile in service of charitable organizations



SALES TAX REMINDER

Every state establishes their own Sales and Use Tax laws and regulations. This is important to keep in mind if you auction tangible personal property in multiple states. What is taxable in one state may not be subject to tax in a neighboring state. It is always important to review the sales tax regulations in the states in which you are conducting business.

Recent discussions among auctioneers have called into question how to apply sales tax to the sale of coins or currency at auction.

Coin dealers and collectors routinely purchase and resale coins and currency through the auction process.

Tennessee defines coins and currency, whether issued by the United States government or other country as “tangible personal property” and it is subject to sales and use tax.

T.C.A. 67-6-102(79)(A) gives us the definition of “sales price” as follows to further clarify:

“...the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased, rented, valued in money, whether received in money or otherwise...”

As tangible personal property the sale of coins and currency may be subject to a sales tax exemption such as in the case of purchases for resale with the appropriate exemption certificate or the case of a casual and isolated sale (e.g. estate auction) in which the name of the principal is disclosed.

Always check with the Tennessee Department of Revenue for clarification and documentation of tax exemptions. More information can be obtained at www.tn.gov/revenue.

Selling Real Estate at Auction

Question: I am a licensed auction gallery. A friend has an estate auction she wants me to handle that includes personal property and real estate. Can I contract that auction?

Answer: No. According to 62-19-102(2): *“It is unlawful for any person to: ... Conduct, or offer to conduct, an auction of real property unless such person is duly licensed as an auctioneer or apprentice auctioneer, and as a broker or affiliate broker under the provisions of the Tennessee Real Estate Broker License Act of 1973...provided, however, with respect to the authority of the apprentice auctioneer to conduct, or offer to conduct, an auction of real property, that the auctioneer for whom the apprentice is employed for such purposes must be on the premises of such property during the auction.”*

Question: I am a licensed auctioneer with a firm license. A local real estate company has asked me to take a piece of property to auction with them. They have the real estate firm license and a real estate broker. Can I contract this auction.

Answer: No. The same provision above will apply to this scenario as well.

Question: I am an apprentice auctioneer with an affiliate broker’s license. Can I work the ring at my sponsoring auctioneer’s auction?

Answer: Yes. 62-19-102(2) goes on to say: *“This subdivision shall not be construed to require ringpersons or other persons not vocally conducting an auction to be duly licensed as auctioneers, nor to be duly licensed under Chapter 13 of this title [Real Estate Code] unless such ringpersons...act as an affiliate broker...within the meaning of Chapter 13.*

Legal Reminders

62-19-115. Rights and duties of licensees.

“Any auctioneer licensed hereunder may conduct auctions at any time in this state. The licensee shall, upon request, furnish to the chief of police or sheriff of the city or county where the auction is to be held a list of properties to be sold twenty-four (24) hours prior to the auction.”

Always contact law enforcement if you believe a seller or consignor is asking you to sell stolen merchandise.

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Please be sure to forward a copy of the NewsLine to licensees in your firm.

*To receive email or text alerts from the Tennessee Auctioneer Commission
go to the direct link at www.tn.gov/notify-app/sign_up*

**CONTINUING EDUCATION - WEST TENNESSEE
FEBRUARY 23, 2015**

THE ESPLANADE CONFERENCE CENTER

**901 CORDOVA STATION AVENUE
CORDOVA, TENNESSEE 38018**

9:00 A.M. - 4:00 P.M. (CENTRAL)

Featuring T. Kyle Swicegood on Salesmanship & Mike Brandly on Ethics

The Tennessee Auctioneer Commission now requires all applicants for an Apprentice, Auctioneer and Public Automobile Auctioneer license to complete the *Eligibility Verification for Entitlements Act Attestation* as a part of their application.

This attestation is to claim your status as either a United States citizen, a qualified alien as defined in Tennessee's Eligibility Verification for Entitlements Act, or a foreign national not physically present in the United States.

U. S. citizens may provide their Social Security Number or a valid driver's license from TN or another state, a birth certificate, a valid U.S. passport, a certificate of citizenship or naturalization or other proof as specified on Part B of the Attestation Instructions.

Qualified aliens status must be presented with two forms of documentation provided in Part C of the Instructions which will include a Certificate of Citizenship, a Naturalization Certificate, Employment Authorization Card, valid Foreign Passport and numerous other options.

A full review of the revised applications are available at the commission website: www.tn.gov/regboards/auction.

